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2 Judge Jon C. Coughenour
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 **WENDY JENDRYSIK,**) Case No. 2:13-cv-00559-JCC
10 Plaintiff,)
11)
12 vs.)
13 **RECEIVABLES PERFORMANCE**) **PLAINTIFF'S MOTION TO DEEM**
14 **MANAGEMENT, LLC,**) **ALLEGATIONS IN AMENDED**
15 Defendant.) **COMPLAINT ADMITTED**
16)
17) **NOTE ON MOTION CALENDAR:**
18) August 23, 2013
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Plaintiff Wendy Jendrysik filed her Amended Complaint and Jury Demand on May 21, 2013 (Dkt. 12) as a matter of course pursuant to Fed. R. Civ. P. 15(a)(1)(B).¹ Ms. Jendrysik duly served the Amended Complaint that same date using the CM/ECF system, as noted in the Certificate of Service. The deadline for Defendant Receivables Performance Management, LLC ("RPM") to respond to the Amended Complaint was June 4, 2013, per Fed. R. Civ. P. 15(a)(3). It is now almost nine weeks past that deadline, and RPM has not yet filed its response, requested an extension of time to file its response, or provided any explanation for its

¹ Rule 15(a)(1)(B) allows a party to amend its pleading once as a matter of course within 21 days after service of a responsive pleading. Here, RPM filed and served its Answer and Affirmative Defenses on April 30, 2012.

failure to comply with Rule 15(a)(3). Therefore, Ms. Jendrysik moves this Court to deem the allegations in the Amended Complaint (other than those relating to the amount of damages) admitted under Fed. R. Civ. P. 8(b)(6).

Rule 8(b)(6) states: “***Effect of Failure to Deny.*** An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied.” Fed. R. Civ. P. 8(b)(6). *See, e.g., Legal Aid Society of Alameda Cnty. v. Brennan*, 608 F.2d 1319, 1334 (9th Cir. 1979) (noting the “established rule[] of construction” that “[t]he allegations are to be treated as admitted since not denied”); *accord Bennett v. Am. Med. Response, Inc.*, 226 F. App’x 725, 727 (9th Cir. 2007); *Carpenters Retirement Trust of W. Wash.*, No. C10–145 RSL, 2011 WL 780894, at *2 (W.D. Wash. Mar. 2, 2011).

The Supreme Court has emphasized the importance of adhering to the rules of litigation and affording respect to the district court that seeks to impose those rules:

The reason for the rules is not that litigation is a game, like golf, with arbitrary rules to test the skill of the players. Rather, litigation is a “winnowing process,” and the procedures for preserving or waiving issues are part of the machinery by which courts narrow what remains to be decided. The District Court’s sensible efforts to impose order upon the issues in play and the progress of the trial deserve our respect.

Exxon Shipping Co. v. Baker, 554 U.S. 471, 487 n.6, 128 S. Ct. 2605, 2618 n.6 (2008) (internal quotations and citation omitted). Ms. Jendrysik asks this Court to enforce the mandate of Rule 8(b)(6) and deem the allegations contained in her Amended Complaint (other than those relating to the amount of damages) admitted as a result of RPM’s failure to comply with Rule 15(a)(3).

1 Dated this 5th day of August, 2013,

2 s/Jon N. Robbins
3 Jon N. Robbins WSBA#28991
4 Marshall S. Meyers (*pro hac vice*)
WEISBERG & MEYERS, LLC
5 Attorneys for Plaintiff

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7 **CERTIFICATE OF SERVICE**

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9 I hereby certify that on August 5, 2013, I electronically filed the foregoing document
10 with the Clerk of the Court using the CM/ECF system which will send notification of such
11 filing to the following:

12

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